

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: SECOND DEPARTMENT

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IN THE MATTER OF

an

APPLICATION FOR PEN REGISTERS AND TRAP  
AND TRACE DEVICES ON 1) A CELLULAR PHONE  
CURRENTLY ASSIGNED MOBILE IDENTIFICATION  
NUMBER (914) 443- 8182, WITH ELECTRONIC SERIAL  
NUMBER 17904462477  
AND SUBSCRIBED IN THE NAME OF ANTHONY  
COLOMBO, BILLED TO PHILIP DIOGUARDI,  
2 EAST MAIN STREET, NO. 4, MIDDLETOWN,  
NEW YORK, 10940-5831; 2) A CELLULAR  
TELEPHONE CURRENTLY ASSIGNED MOBILE  
IDENTIFICATION NUMBER (917) 560-0397, WITH  
ELECTRONIC SERIAL NUMBER 316010009486930  
AND SUBSCRIBED IN THE NAME OF JEFFREY ROSEN,  
1444 11TH STREET, FORT LEE, NEW JERSEY,  
POSSESSED AND UTILIZED BY CHRISTOPHER  
COLOMBO, RESIDING AT 51 HORTON ROAD,  
WASHINGTONVILLE, NEW YORK ; 3) A TELEPHONE  
LINE AND INSTRUMENT CURRENTLY ASSIGNED  
NUMBER (914) 496-6506, SUBSCRIBED IN THE NAME  
OF LUCILLE COLOMBO AT 51 HORTON ROAD,  
WASHINGTONVILLE, NEW YORK, 10992; 4) A  
TELEPHONE LINE AND INSTRUMENT CURRENTLY  
ASSIGNED NUMBER (914) 496 - 8201, SUBSCRIBED  
IN THE NAME OF ANTHONY COLOMBO, 25 HORTON  
ROAD, BLOOMING GROVE, NEW YORK 10914; AND 5)  
A TELEPHONE LINE AND INSTRUMENT  
CURRENTLY ASSIGNED NUMBER (914) 343 - 3313,  
SUBSCRIBED IN THE NAME OF PHILIP DIOGUARDI,  
2 EAST MAIN STREET, MIDDLETOWN, NEW YORK  
10940.

AFFIDAVIT IN SUPPORT  
OF AN APPLICATION  
FOR PEN REGISTERS AND  
TRAP AND TRACE  
DEVICES

-----X  
WESTCHESTER COUNTY)

) ss.

STATE OF NEW YORK )

JOSEPH McCABE, being duly sworn, deposes and says:

1. I am an Investigator with the New York State Police (hereinafter "NYSP"), assigned to the Special Investigations Unit ("SIU"). I have been a member of the NYSP for more than seventeen (17) years, during which time I have made, or assisted in, more than three hundred (300) arrests for Promoting Gambling and Possession of Gambling Records in cases involving allegations of illegal bookmaking. I have acted in an undercover capacity on numerous occasions, placing bets myself with various bookmakers over the telephone. I have also interviewed numerous bookmakers, wherein I discussed the means and methods of their illegal activities, in particular, operating a wireroom. I have also supervised dozens of investigations which utilized court-authorized electronic surveillance. During these investigations, I intercepted and analyzed thousands of conversations relating to illegal bookmaking activities. Further, I have been involved in the execution of dozens of court-ordered search warrants of illegal wirerooms, which resulted in the seizure of, and my subsequent analysis of thousands of gambling records. For the past eight years, the vast majority of my investigations have been gambling related. I have testified before grand juries as an expert witness in the area of illegal bookmaking.

2. I make this affidavit in support of the application of Assistant Deputy Attorney General (ADAG) Amy L. Cohn of the New York State Attorney General's Organized Crime Task Force (OCTF) for pen registers and trap and trace devices (caller identification) to be attached to 1) the cellular telephone line and instrument with Electronic Serial Number (ESN) 17904462477, currently assigned number (914) 443-8182, subscribed in the name of Anthony Colombo but billed to Philip Dioguardi at 2 East Main Street, number 4, Middletown, New York 10940-5831(hereafter the Dioguardi Cell Phone); 2) the cellular telephone line and instrument with ESN 316010009486930, currently assigned number (917) 560-0397, subscribed in the name of Jeffrey Rosen, 1444 11th Street, Fort Lee, New Jersey, 07024, but possessed and utilized by Christopher

Colombo, residing at 51 Horton Road, Washingtonville, New York (hereafter the Chris Colombo Cell Phone); 3) the telephone line and instrument currently assigned number (914) 496 - 6506 , and subscribed in the name of Lucille Colombo at 51 Horton Road, Washingtonville, New York (hereafter the Chris Colombo Home Phone); 4) the telephone line and instrument currently assigned number (914) 496-8201 , and subscribed in the name of Anthony E. Colombo at 25 Horton Road, Blooming Grove, New York (hereafter the Anthony Colombo Home Phone); and 5) the telephone line and instrument currently assigned number (914) 343 -3313 , and subscribed in the name of Philip Dioguardi at 2 East Main Street, Apartment 4, Middletown, New York (hereafter the Dioguardi Home Phone). Both OCTF and the New York State Police are law enforcement agencies, as that term is defined in CPL section 705.4, authorized to conduct this investigation.

3. I make this affidavit based upon personal knowledge and upon information and belief, the source of my information being my conversations with other members of the NYSP assigned to this investigation, my examination of reports prepared by members of the NYSP assigned to this and other investigations, records maintained and supplied by Bell Atlantic Mobile and Bell Atlantic Telephone Company, Citizens Telecom, Nextel Communications, and DPI/TFS Inc. and records maintained and provided by the New York Division of Criminal Justice Services and the New York State Department of Motor Vehicles. I have also consulted with Joseph Rauchet, Chief of Intelligence for OCTF and with Gregory Stasiuk, currently Deputy Chief Investigator with the New York State Attorney General's Investigations Bureau, formerly Chief of Intelligence for OCTF and Chief of the Intelligence Unit for the New York City School Construction Authority's Office of the Inspector General.

4. Based upon the facts and analyses set forth below, I believe that there is

reasonable suspicion to believe that the crimes of Promoting Gambling in the First and Second Degrees and Possession of Gambling Records in the First and Second Degrees, and Conspiracy to commit those crimes, in violation of Penal Law sections 225.05, 225.10, 225.15, 225.20, and 105, respectively, have been, are being and are about to be committed, and that information generated by the requested pen registers and trap and trace devices will relate to, and will be relevant to, the investigation of said designated crimes.

5. The subjects of this investigation are Philip Dioguardi, Christopher Colombo and Anthony Colombo. Dioguardi resides at 2 East Main Street, Middletown, New York and is known to law enforcement under NYSID 3120137L. He has previously been arrested at least 5 times in New York, most recently in Kings County in 1973 for Promoting Gambling (the disposition of this case does not appear on his NYSIS sheet). Dioguardi has two additional arrests in California, for narcotics and assault offenses. Christopher Colombo resides at 51 Horton Road, Washingtonville, New York, and is known to law enforcement under NYSID 8166331M. He has a 1996 conviction for Promoting Gambling in the Second Degree, in Middletown, New York. Anthony Colombo resides at 25 Horton Road, Blooming Grove, New York and is known to law enforcement under FBI #776837DA7. He was convicted in 1986 of violating the federal RICO statute and sentenced to 14 years. He was released on that conviction in 1993.

6. I am informed by Gregory Stasiuk that Anthony Colombo is listed by the Federal Bureau of Investigation as a "made" member of the Colombo Family, one of the five "mafia" families operating in the New York City metropolitan area, and that Anthony Colombo is the son of the late Joseph Colombo, for whom this mafia family is named. I have recently confirmed Stasiuk's information through my discussions with FBI agents, who have also confirmed for me

that Christopher Colombo and Philip Dioguardi are both "associates" of the Colombo family of La Cosa Nostra (or "LCN", another designation for the mafia, used commonly by federal law enforcement authorities).

7. Based upon my conversations with Stasiuk and Rauchet, I am informed that a mafia or LCN family has the following structure: the Boss, who acts as the CEO of the family, with final authority within the family to settle disputes, and to whom the other members of the family provide a portion of their illegal earnings; the Underboss, second in command to the Boss; the Consigliere, a counselor to the Boss and Underboss on family matters and on interactions with other LCN families; Captains or Capos, who act as mid-level management, overseeing the activities of the soldiers and associates who report to them; Soldiers, the lowest title for persons who are actually inducted into the LCN family; and Associates, who are persons who are not inducted or "made" members of the LCN family, but who nevertheless participate in the illegal businesses of the family. Some Associates may be such good "earners" for the family, or be so trusted, that they gain direct access to mid-level or upper-level management of the family, if the Boss permits it.

8. Since October, 1999 NYSP members have observed Dioguardi frequently in the vicinity of First Avenue and 115th Street in Manhattan. He has sometimes been observed arriving at that location with either Anthony Colombo or Chris Colombo. While in this vicinity, one or more of the subjects have been observed meeting with William Cali (NYSID 2725485J -- at least 13 prior arrests in New York for Grand Larceny, Narcotics, Assault and Weapons offenses, resulting in at least 5 misdemeanor convictions and one felony conviction), Gaetana Cirillo (NYSID 0781781L -- at least 9 prior arrests in New York for gambling offenses, resulting in at least 1 felony and 4 misdemeanor convictions), Robert Milano (NYSID 1335059M -- at least 4

prior arrests for gambling offenses, attempted murder and narcotics offenses, resulting in at least 2 felony convictions and 1 misdemeanor conviction), Rinaldo Nistico (NYSID 4721506P -- 3 prior arrests for assault and gambling offenses, resulting in at least 1 misdemeanor conviction), and Daniel Pagano (NYSID 3519116Q -- at least 7 prior arrests in New York for attempted murder, gambling and racketeering offenses, resulting in 3 felony convictions. Pagano was also convicted of Extortion Racketeering in Federal Court in New York in 1996. I am informed by Joseph Rauchet, OCTF Chief of Intelligence, that Pagano is a soldier in the Genovese Mafia Family). Further, Dioguardi has been observed meeting with John Berlingieri 420 East 115th Street in Manhattan. Berlingieri was previously arrested for gambling in the Bronx.

9. I recently met with a Confidential Source (hereafter CS-1) who informed me of the following: CS-1 was recently caught stealing from his employer. CS-1 stated that he was stealing in an effort to generate additional money to pay off gambling debts. CS-1 stated that he was given the phone number of a wireroom where he could call in his bets by a person he identified to me (hereafter, "the Introducer"). CS-1 further stated that the Introducer dealt directly with the principals of the gambling operation regarding CS-1 winings and losses, in that CS-1 paid his gambling losses to, and collected his winnings from, the wireroom by delivering it to or collecting it from the Introducer. During the time that CS-1 was betting with this wireroom, the Introducer told CS-1 that this gambling operation belonged to Chris Colombo. CS-1 does not know the basis for this assertion by the Introducer, other than the fact that the Introducer dealt with the principals in the wireroom concerning CS-1's winnings and losses. However, this information has been somewhat corroborated by telephone usage records, which I have examined, for the Chris Colombo Cell and Home Phones. These records disclose calls from both of those phones to the office of the Introducer. The subjects involvement with this gambling enterprise has been further

corroborated by the facts set forth below.

10. CS-1 provided to me the phone number where he called in his bets. This number, (914) 342-6396, is subscribed in the name of Tina Zollner, Building 1, Apartment 2B, 35 Silver Lake Scotchtown Road, Middletown, New York. I have obtained telephone usage records for this phone number for the time period of February 12 through March 12, 2000. Those records reflect that 77 of the 78 outgoing calls from this phone between February 12, and March 8, 2000 were to single number in the Bronx. Thereafter, from March 9 through March 12, all 22 of the outgoing calls from this Zollner phone were to a number subscribed in the name of Mary Peters at 333 East 116th Street, New York, New York.

11. Significantly, I have been informed by agents of the FBI that this Mary Peters address is in fact a gambling wireroom location. A surveillance of said location conducted on March 30, 2000, by myself and other members of the NYSP assigned to this investigation, corroborates this information. On that date we observed, in pertinent part, the arrival of three men at said location between the hours of 5:09 and 5:52 p.m., approximately. The last of these three men arrived in an automobile registered to, and is believed to be, Anthony M. DeFranco. DeFranco is known to law enforcement under NYSID 4391405N, and has been convicted 4 times for gambling offenses.

12. During the above surveillance, at approximately 6:57 p.m., a male tentatively identified as John Ferrara of 420 East 115th Street, New York, New York was observed entering the location. Ferrara stayed only 5 minutes, then left the location, but returned at 7:27 p.m. and re-entered the location. Again, Ferrara stayed only a few minutes, but this time when he exited he was accompanied by DeFranco. DeFranco re-entered the location. At approximately 7:59 p.m., Ferrara and the other two males who had entered the location between approximately 5:09 and

5:52 p.m., exited the location. At approximately 8:05 p.m., Ferrara was observed seated in an automobile parked in front of 420 East 115th Street, New York, New York. Significantly, the automobile in which Ferrara was seated, a 1995 Lincoln registered to George R. Pretino, has been noted in previous surveillances being operated by a male who meets with Philip Dioguardi.

13. In my opinion, based upon my experience and training, the activity observed during the above described surveillance is entirely consistent with the information provided by the FBI that an illegal gambling wireroom is located at 333 East 115th Street in Manhattan. The presence of the three males, including the oft convicted bookmaker Anthony DeFranco, between the hours of 6 and 8 p.m., approximately, comports with normal bookmaking hours during this time of the year.<sup>1</sup> The short visits to the location by Ferrara are also consistent with the practice of some gambling enterprises of having the records of their illegal gambling activity removed from the wireroom at intervals during the course of their "day", in an effort to thwart or minimize the impact of any law enforcement action, such as the execution of a search warrant. Finally, the frequent telephonic contact between the Zollner phone (where CS-1 called in his bets) and the Peters phone is entirely consistent with the bookmaking practice of having one wireroom "lay off" bets to another wireroom.<sup>2</sup>

14. CS-1's information has been confirmed in one other aspect. On April 25, 2000,

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<sup>1</sup> Normal bookmaking hours change with the season of the year, as the sports being played change. For example, normal bookmaking hours during the professional football season may be different from the hours normally kept by bookmakers during the summer when only baseball is being played.

<sup>2</sup> Bookmakers make most of their profit by charging a ten percent surcharge or "vig" on losing bets. Thus if the bookmaker can balance the bets on either side of a sporting contest, the losing bets will pay the winning bets, while the bookmaker will keep the "vig". In order to accomplish this result, a bookmaker who has accepted too many bets on one side of a sporting contest, will have a relationship with another wireroom, where he can place, or "lay off", his excess wagers.



members of the NYSP assigned to this investigation conducted a surveillance of the Introducer's office. They observed an automobile registered to Tina Zollner arrive, and a woman believed to be Zollner enter the Introducer's office, remain a short while, then exit and leave the location. Zollner is the subscriber of the telephone where CS-1 placed bets (see paragraphs 9 and 10, above). This surveillance corroborates CS-1's information in that it demonstrates a relationship between the Introducer and Zollner.

15. I have been informed by Agents of the FBI that Philip Dioguardi utilizes cellular telephone number (914) 443-8182 (the Dioguardi Cell Phone). This information has been corroborated by the records of Bell Atlantic Mobile, which disclose that this phone, while subscribed in the name of Anthony Colombo, is billed to Dioguardi at Dioguardi's home address, and that this phone is used to call many people and places which have been associated with Dioguardi through analysis of his home phone usage records and through surveillance. (See discussion of telephone usage records, below.) I have also been informed by Agents of the FBI that Chris Colombo utilizes cellular telephone number (917) 560-0397 (the Chris Colombo Cell Phone). While this phone is subscribed in the name of Jeffrey Rosen, Fort Lee, New Jersey, my analysis of its usage records, as well as my analysis of the usage records of the other telephones mentioned herein, discloses that this phone is in frequent contact with the other subjects of this investigation, and that it is used to call many of the people of and places that have been associated with Chris Colombo through analysis of his home telephone usage records. (See below)

16. Telephone toll records have been obtained for the captioned telephones, as follows: From Bell Atlantic Mobile, usage records for the time period of January 30 through March 30, 2000 for the Dioguardi Cell Phone; From Nextel Communications, usage records for the time period from October 13, 1999 through December 12, 1999 for the Chris Colombo Cell

Phone; From DPI/TFS Inc., usage records for the time periods of October 12, 1999 through January 18, 2000 for the Chris Colombo Home Phone and September 23, 1999 through January 17, 2000 for the Anthony Colombo Home Phone; and From Citizens Telecom, for the time period from December 14, 1999 through March 12, 2000 for the Phil Dioguardi Home Phone. These records disclose that, for the time periods covered, there was frequent and consistent contact between and among the subjects of this investigation. Specifically, there were 29 calls between the Dioguardi Cell Phone and the Anthony Colombo Home Phone. Further, there were 66 calls between the Chris Colombo Cell Phone and the Dioguardi Cell Phone, 53 calls between the Chris Colombo Cell Phone and the Dioguardi Home Phone, and 47 calls between the Chris Colombo Cell Phone and the Anthony Colombo Home Phone. Additionally, the Chris Colombo Home Phone was used to place 42 calls to the Dioguardi Home Phone. Also, the Anthony Colombo Home Phone was used to place 23 calls to the Dioguardi Home Phone.

17. There are many other connections between and among the subjects of this investigation demonstrated by the usage pattern of the captioned telephones. The Dioguardi Cell Phone was used to place 71 calls to telephone number (212) 410-7444, listed to Theresa Ferrara, at 420 East 115th Street, Manhattan (the same address where Dioguardi has been observed meeting the convicted bookmaker John Berlingieri, and the apparent residence of John Ferrara, whose activities were noted in the March 30, 2000 surveillance of the illegal gambling wireroom on 115th Street in Manhattan -- see paragraphs 11 and 12, above). Usage records for the Ferrara telephone for the time period between December 7, 1999 and March 3, 2000 disclose that the Dioguardi Cellular Telephone was called an additional 16 times from this Ferrara phone. Additionally, the Ferrara phone was called from the Anthony Colombo Home phone on 4 occasions, and from the Chris Colombo Cellular telephone on 7 occasions, from the above-


mentioned records for those phones.

18. From all of the above, based upon my experience and training, I believe that the crimes of Promoting Gambling in the First and Second Degrees, Possession of Gambling Records in the First and Second Degrees, and Conspiracy to commit said crimes, have been, are being and are about to be committed, and that the information which will be gathered from installing pen registers and trap and trace devices on the captioned telephones will relate and be relevant to my investigation of said crimes.

THEREFORE, I respectfully request that the application of ADAG Amy Cohn, of OCTF, for an Order authorizing the installation and use of pen registers and trap and trace devices (caller identification) on the captioned telephone lines and instruments, be granted. The geographic limits of the trap and trace authorization sought herein should be the continental United States, where the Caller Identification feature is available.

  
Joseph McCabe, NYSP, Shield # 3675

Sworn to before me this  
28<sup>th</sup> day of April, 2000.

  
Notary Public  
MAYEL ANN LITBY  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 02406028663  
QUALIFIED IN QUEEN COUNTY  
COMMISSION EXPIRES 08/02/2001